

CHIEF JUDGE RICARDO MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PERIENNE DE JARAY,
Plaintiff,

v.

ATTORNEY GENERAL OF CANADA
FOR HER MAJESTY THE QUEEN,
CANADIAN BORDER SERVICES
AGENCY, GLOBAL AFFAIRS CANADA
fka DEPARTMENT OF FOREIGN
AFFAIRS AND INTERNATIONAL
TRADE CANADA, GEORGE WEBB,
KEVIN VARGA, and PATRICK LISKA,
Defendants.

NO. 2:16-cv-00571-RSM

**DECLARATION OF DAVID R. WEST
RE MOTION TO SET FRCP 16
CONFERENCE AND TO OPEN
DISCOVERY**

Noted on Motion Calendar:
Friday, August 19, 2016

David R. West declares as follows:

1. I am counsel for defendants in this matter. I am over the age of 18 years, have personal knowledge of the information contained in this declaration and am competent to testify thereto if called as a witness.

2. Attached as Exhibit A hereto is a true and correct copy of the August 4, 2016, email exchange between the Court's deputy, Lowell Williams, and counsel of record advising that the Court would issue an initial scheduling order after the answer was filed and a joint status report was unnecessary before then.

3. Attached as Exhibit B hereto is a true and correct copy of an extended set of emails exchanged between me and counsel for plaintiff, Janis Puracal. The email exchange starts with Ms. Puracel's email on July 29, 2016, asserting there were upcoming deadlines to confer under Fed. R. Civ. P. 26(f) and to submit a joint status report to the Court. The email exchange continues over two weeks and ends with Ms. Puracal's email to me of August 12, 2016, in which she asserted that her client's motion was a "motion for relief from a deadline," that a deadline existed and had passed under Fed. R. Civ. P. 26(f), and that the parties were at an impasse so there was "no need to confer" further.

4. The parties had no face to face or telephone discussions regarding plaintiff's request for discovery, a discovery conference, and the other issues addressed in Exhibit B (and A, to the extent relevant). All communications regarding those topics were conducted via the emails which are exhibits to this declaration.

5. If plaintiff's counsel had been willing to meet and confer by telephone on Monday, August 15, 2016, as I had offered, I would have advised her at that time of the motions that defendants intended to file, as identified in our brief filed with the Court in opposition to the pending motion. However, she filed the pending motion and then advised me (as set out in Exhibit B) that conferring was unnecessary.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 17th day of August, 2016 in Seattle, Washington.

s/David R. West
David R. West

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the following:

Andrew C. Lauersdorf
Janis C. Puracal
MALONEY LAUERSDORF REINER, PC
1111 E. Burnside Street, Suite 300
Portland, Oregon 97214
Telephone: 503-245-1518
Facsimile: 503-245-1417
acl@mlrlegalteam.com
jcp@mlrlegalteam.com
Attorneys for Plaintiff Perienne de Jaray

DATED this 17th day of August, 2016.

s/Leslie Boston
Leslie Boston

GSB:7992216.1

EXHIBIT A

David West

From: Janis Puracal <jcp@mlrlegalteam.com>
Sent: Thursday, August 4, 2016 1:39 PM
To: Lowell_Williams@wawd.uscourts.gov
Cc: Andrew Lauersdorf; David West; Don Scaramastra; Katie Welsh; laurie_cuaresma@wawd.uscourts.gov; Victoria Slade
Subject: RE: de Jaray v. Attorney General of Canada, Case No. 2:16-cv-00571-RSM

Thank you, Ms. Williams.

Janis



Janis C. Puracal

1111 E. Burnside Street, Suite 300
Portland, Oregon 97214
t. 503.405.7804 fx. 503.245.1417
www.mlrlegalteam.com

Co-founder Oregon Innocence Project: <http://ojrc.info/oregon-innocence-project/>

****Note that my email address has changed to jcp@mlrlegalteam.com. Visit our website at www.mlrlegalteam.com**

From: Lowell_Williams@wawd.uscourts.gov [mailto:Lowell_Williams@wawd.uscourts.gov]
Sent: Thursday, August 04, 2016 1:31 PM
To: Janis Puracal <jcp@mlrlegalteam.com>
Cc: Andrew Lauersdorf <acl@mlrlegalteam.com>; David West <DrWest@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Katie Welsh <kmw@mlrlegalteam.com>; laurie_cuaresma@wawd.uscourts.gov; Victoria Slade <VSlade@gsblaw.com>
Subject: Re: de Jaray v. Attorney General of Canada, Case No. 2:16-cv-00571-RSM

Dear Ms. Puracal,

Thank you for your email. Judge Martinez will issue an initial scheduling order after the answer is filed. There is no need to submit a joint status report before then.

Regards,



Lowell Williams
Courtroom Deputy to
Chief Judge Ricardo S. Martinez
United States District Court
Western District of Washington
206-370-8521

From: Janis Puracal <jcp@mlrlegalteam.com>

To: "lowell_williams@wawd.uscourts.gov" <lowell_williams@wawd.uscourts.gov>, "laurie_cuaresma@wawd.uscourts.gov" <laurie_cuaresma@wawd.uscourts.gov>
Cc: David West <DrWest@gsblaw.com>, Victoria Slade <VSlade@gsblaw.com>, Don Scaramastra <DScaramastra@gsblaw.com>, Andrew Lauersdorf <acl@mlrlegalteam.com>, Katie Welsh <kmw@mlrlegalteam.com>
Date: 08/04/2016 01:10 PM
Subject: de Jaray v. Attorney General of Canada, Case No. 2:16-cv-00571-RSM

Ms. Williams and Ms. Cuaresma,

I represent the plaintiff (Perienne de Jaray) in a case pending before Judge Martinez. I have copied counsel for the defendants (David West) on this email.

FRCP 16 and 26 generally require the parties to confer and submit a joint status report without an order from the court and according to certain deadlines. We understand that some judges may prefer to issue an initial scheduling order setting the dates for conferral and a joint status report, which may be different from the Federal Rules. Does Judge Martinez have a preference?

Janis



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EXHIBIT B

David West

From: Janis Puracal <jcp@mlrlegalteam.com>
Sent: Friday, August 12, 2016 8:21 AM
To: David West
Cc: Victoria Slade; Don Scaramastra; Andrew Lauersdorf; Katie Welsh
Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

David,

This is not a Rule 37 motion. We have yet to propound any discovery and cannot, therefore, compel a response. Plaintiff's motion was filed under FRCP 26 and was properly noted as a "motion for relief from a deadline" under LR7(d)(2). We are asking the court to relieve Plaintiff from the August 2 deadline for conferral under FRCP 26(f) and permit discovery despite the parties' failure to confer.

Your last email to me suggested that further conferral on this issue would be fruitless unless I could tell you the type of discovery necessary and on what issues. As I explained in my response email, we are unable to propose discovery that is tailored to the issues in your motion without knowing the issues in your motion. The parties are at an impasse. Your email below does not suggest otherwise. There is no need to further confer when that conferral would be unproductive, and there is no requirement to confer on motions falling outside LR 37.

With respect to your proposal below, we cannot agree to wait for your motions to dismiss before taking discovery. Under LR 7(d), we would be unable to note a motion for consideration or get a ruling in advance of our deadline to respond to the motions to dismiss.

Janis



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****Note that my email address has changed to jcp@mlrlegalteam.com. Visit our website at www.mlrlegalteam.com**

From: David West [mailto:DrWest@gsblaw.com]
Sent: Thursday, August 11, 2016 4:04 PM
To: Janis Puracal <jcp@mlrlegalteam.com>
Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>
Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

Janis:

I am on vacation this week, as you know. I was very surprised to see that you filed a motion while I was gone, when I indicated to you that I was available to confer with you on Monday morning about your various requests. From our perspective, there is no emergency requiring a motion at this point.

Having read your motion and supporting declaration quickly, I suggest that it is premature under our Local Rules, which require counsel to confer by phone or in person. Had you waited until Monday, I would have explained that any speculation that plaintiff might need discovery on certain topics raised in our yet-to-be filed motions should be discussed when you see the motions and you are able to justify the discovery you seek. If the Court agrees discovery is appropriate, then the Court can allow you time to conduct the discovery. We are wasting our client's resources, and those of the Court, on hypothetical matters that may never need to be addressed.

For the record, your interpretation of the requirements of FRCP 16 and 26 also conflict, in our view, with the provisions of our local rules and also the practice of Judge Martinez, which was confirmed by his deputy.

Finally, we do not believe that this is a "second Friday" motion under LCR 7(d)(2) as the motion does not seek relief from any deadline, does not seek a protective order, and is not a motion to seal. Accordingly, assuming you do not wish to strike your motion and confer as required by our Local Rules (which we suggest is the appropriate approach), we request that you re-note the motion properly for August 25, 2016. Please advise immediately.

David

From: Janis Puracal [<mailto:jcp@mlrlegalteam.com>]

Sent: Friday, August 5, 2016 5:04 PM

To: David West <DrWest@gsblaw.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

David:

The scope of discovery will depend on the bases for your motions. Because you are unwilling to tell us the bases for your motions, we are prepared to move the court for a Rule 16 scheduling conference and order.

By way of explanation, we are trying to save the court and the parties some time. Ultimately, you will file your motions on September 29, and Plaintiff will have limited time under the rules to respond. Rather than waiting for the motions and requesting leave for discovery and multiple extensions to respond while we wait for discovery responses, we prefer to begin that process of discovery now.

Janis



Janis C. Puracal

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****Note that my email address has changed to jcp@mlrlegalteam.com. Visit our website at www.mlrlegalteam.com**

From: David West [<mailto:DrWest@gsblaw.com>]
Sent: Friday, August 05, 2016 4:38 PM
To: Janis Puracal <jcp@mlrlegalteam.com>
Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>
Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

I am available the morning of the 15th. In the meantime, since you assert you have a sufficient basis to ask the Court to allow discovery without further discussion, you presumably can tell me on what issues, what type of discovery, why such discovery is necessary and appropriate, and how discovery meets the standards described below. I would expect these issues to be part of any motion, so I think that you should be able to let me know now. Please tell me what those are, in advance of our discussion on the 15th. Some draft discovery requests would probably be helpful in framing the issues and explaining to my client what you want (and evaluating the burden of responding). If you can't (or won't) provide these answers, then I am not sure how we will effectively confer on these issues.

From: Janis Puracal [<mailto:jcp@mlrlegalteam.com>]
Sent: Friday, August 5, 2016 9:26 AM
To: David West <DrWest@gsblaw.com>
Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>
Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

David,

Again, it would be helpful to understand the bases for your motions. That would allow us to articulate the scope of discovery necessary to respond. If you are available to confer on Monday, August 15 after your vacation, we will hold off on our motion. If, however, you are unwilling to articulate the bases for your motions, we will seek leave from the court.

Janis



Janis C. Puracal

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Co-founder Oregon Innocence Project: <http://ojrc.info/oregon-innocence-project/>

****Note that my email address has changed to jcp@mlrlegalteam.com. Visit our website at www.mlrlegalteam.com**

From: David West [<mailto:DrWest@gsblaw.com>]
Sent: Friday, August 05, 2016 8:57 AM
To: Janis Puracal <jcp@mlrlegalteam.com>
Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>
Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

Before you do that, I do think we need to confer further. You have not identified what type of discovery you believe is appropriate, what discovery you want to take, what issues you believe require discovery, and why the discovery you propose falls within the standards of the cases mentioned below. All of those topics must be covered by a meet and confer, which is why I suggested we discuss these matters after the Court issues its scheduling order. Further, it is highly inappropriate to conduct discovery prior to FRCP 12(b)(6), which is one of the motions we will be filing.

From: Janis Puracal [<mailto:jcp@mlrlegalteam.com>]

Sent: Friday, August 5, 2016 8:09 AM

To: David West <DrWest@gsblaw.com>

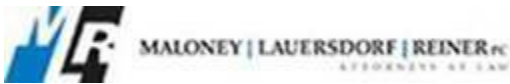
Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

David,

I understand your position. We need to move forward on our end given that time is limited. Since your clients do not believe discovery is appropriate or necessary, we will move the court for leave to take discovery. If you think that further conferral would be productive, please let me know right away.

Janis



Janis C. Puracal

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From: David West [<mailto:DrWest@gsblaw.com>]

Sent: Thursday, August 04, 2016 5:16 PM

To: Janis Puracal <jcp@mlrlegalteam.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

I will confer with my clients, but I am on vacation next week and not available to talk. I will get back to you on my return, but as I noted before, discovery is very narrowly circumscribed even where it is available in connection with motions to dismiss, and we do not believe any discovery is appropriate or necessary here.

From: Janis Puracal [<mailto:jcp@mlrlegalteam.com>]

Sent: Thursday, August 4, 2016 1:43 PM

To: David West <DrWest@gsblaw.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

David,

We will follow the JA's email on the submission of a joint status report. We would, however, appreciate the opportunity to take discovery in advance of motions to dismiss so that we are prepared to respond. We propose to confer on the motions to dismiss and reasonable limits on pre-motions discovery next week. Please let me know whether your clients will agree.

Janis



Janis C. Puracal

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****Note that my email address has changed to jcp@mlrlegalteam.com. Visit our website at www.mlrlegalteam.com**

From: David West [<mailto:DrWest@gsblaw.com>]

Sent: Tuesday, August 02, 2016 4:17 PM

To: Janis Puracal <jcp@mlrlegalteam.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

Janis –

In our experience, and under our local rules, the timing of and the subjects to be discussed at the Rule 16 and 26 conferences are established by order of the Court. That is Judge Martinez's standard practice – he issues an order outlining the deadlines and the topics pursuant to the local rules. Thus, we do not believe there is any deadline currently at hand. I have never had anyone claim before that the Federal Rules establish such a deadline.

When we do have an order from the Court, we will need to discuss the limitations on any discovery we believe can take place during the jurisdictional stage of this action. Discovery is narrowly limited and only allowed to verify allegations of specific facts, if any, necessary to determine the preliminary issues of the Court's subject matter jurisdiction. We do not believe the Court has subject matter jurisdiction, that it should exercise jurisdiction over this matter, or that any discovery is necessary for the Court to so rule. Further, discovery into the merits is not appropriate until and unless the Court determines that it does have jurisdiction. Finally, to the extent you contend discovery is needed for the Court to rule on the jurisdictional issues, the Court will need to carefully evaluate any requested discovery in light of the factors identified in cases such as *Societe Nationale Industrielle Aerospatiale v. U.S. District Court*, 482 U.S. 522 (1987), *Arriba Ltd. V. Petroleos Mexicanos*, 962 F.2d 528 (5th Cir. 1992), and *First City, Texas-Houston, N.A. v. Rafadain Bank*, 150 F.3d 172 (2nd Cir. 1998).

Once we do have an order from Judge Martinez (which I expect he will issue shortly after ruling on our stipulation), we should meet and confer on whether you believe any discovery is needed at this stage, and if so, to what extent. While I do not have instructions from my clients yet, it is possible we may bring a motion to stay or limit discovery after we have conferred with you.

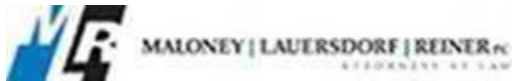
David

From: Janis Puracal [<mailto:jcp@mlrlegalteam.com>]
Sent: Tuesday, August 2, 2016 3:26 PM
To: David West <DrWest@gsblaw.com>
Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>
Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

David,

I am checking in on my email below. Do you have time to confer today or tomorrow?

Janis



Janis C. Puracal

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From: Janis Puracal
Sent: Monday, August 01, 2016 7:59 AM
To: 'David West' <DrWest@gsblaw.com>
Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>
Subject: FW: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

David,

We are calculating the dates under FRCP 16(b)(2) and FRCP 26(f)(1) and (2).

Janis



Janis C. Puracal

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From: David West [<mailto:DrWest@gsblaw.com>]
Sent: Friday, July 29, 2016 9:25 PM

To: Janis Puracal <jcp@mlrlegalteam.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: Re: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

I am unaware of any order issued by the court. Has one been issued?

David R. West
(206) 947-7987 cell

On Jul 29, 2016, at 5:17 PM, Janis Puracal <jcp@mlrlegalteam.com> wrote:

David,

Our deadline to confer under FRCP 26(f) is coming up on August 2, with our deadline for the joint report on August 16. Are you available to talk on Monday (August 1) after 3:30 p.m. or Tuesday (August 2) after 1:30 p.m.?

Janis

<image001.gif>

Janis C. Puracal

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